

Message Text

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ORIGIN NEA-12

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FM SECSTATE WASHDC

TO AMEMBASSY COLOMBO PRIORITY

INFO AMEMBASSY NEW DELHI

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E.O. 11652: N/A

TAGS: EAID, CE

SUBJECT: MOV NEGOTIATIONS

REF: COLOMBO 826

1. GUIDANCE ON POINTS RAISED BY CEYLONese AT MARCH 19 MEETING, (REFTEL), ARE OUTLINED BELOW:

2. IS GSL LEGALLY REQUIRED TO REPAY ICA LOANS AT HIGHEST (FEEC) RATE? (PARA 1, REFTEL): WE HOPE THIS QUESTION IS NOW LAID TO REST WITH USG COMPROMISE PROPOSAL (PARA 5, REFTEL) AND THAT LEGAL ARGUMENT CAN BE CLOSED. IF GSL PURSUES THIS FURTHER YOU CAN SAY THE FOLLOWING: INTENT OF THE PARTIES IS A PRINCIPAL REQUIREMENT FOR ESTABLISHING CONTRACTUAL OBLIGATION. WHEN, AS IN THIS CASE, INTENT IS NOT MADE CLEAR IN THE LIMITED OFFICIAL USE

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DOCUMENT ITSELF, IT IS APPROPRIATE TO DRAW OTHER EVIDENCE

INCLUDING PRECEDENT AND CUSTOMARY PRACTICE UNDER SIMILAR CIRCUMSTANCES. MAINTENANCE OF VALUE CLAUSES ARE UNIFORMLY INCLUDED IN CONTRACTS FOR THE PROTECTION OF THE PARTY WHOSE CURRENCY IS BEING USED IN ANOTHER COUNTRY. IT HAS BEEN THE UNIFORM PRACTICE OF THE UNITED STATES TO SEEK THE GREATEST SUCH PROTECTION AVAILABLE IN TERMS OF THE CURRENCY REGULATIONS OF THE LOCAL GOVERNMENT. GSL CERTAINLY AWARE OF THIS PRACTICE FOR IT IS EVIDENT IN LANGUAGE OF DLF LOANS. GSL CANNOT

NOW CLAIM IT WAS INTENT OF PARTIES TO PROVIDE MAINTENANCE OF VALUE SUBJECT TO DILUTION BY GSL CURRENCY REGULATIONS CONTAINING UNFAVORABLE EXCHANGE RATES.

3. ARE PAKISTAN AND SRI LANKA EXCHANGE SYSTEMS COMPARABLE AND IS SRI LANKA BEING GIVEN EQUAL TREATMENT? (PARA 3, REFTEL): WE DO NOT BELIEVE IT IS PROFITABLE TO CONTINUE ATTEMPTS TO COMPARE TWO SYSTEMS WHICH ALTHOUGH BEARING SOME SIMILARITIES ARE GREATLY DIFFERENT IN NATURE. ALSO WE DO NOT WISH TO BRING IMF INTO ROLE AS ARBITRATOR OF DISTINCTIONS BETWEEN BONUS VOUCHER AND FEEC SCHEMES AS APPLIED TO US AID LOANS. WE DO NOT CONSIDER THIS PROPER IMF FUNCTION. WE THINK POINTS OUTLINED STATE 59759 STAND ON OWN MERIT. CEYLON SYSTEM DIFFERS FROM PAKISTAN'S:

A. IN PURPOSE: IT OPERATES PRIMARILY TO CONTROL PRICE OF IMPORTS WHILE PAKISTANI SYSTEM FOCUSED ON LIMITED FUNCTION OF EXPORT INCENTIVE.

B. IN INFLUENCE: SRI LANKA FEEC SYSTEM COVERS 58 PERCENT OF IMPORTS AND 14 PERCENT OF EXPORTS WHILE WE UNDERSTAND PAKISTAN SYSTEM COVERED LESS THAN 15 PERCENT EXPORTS AND LESS THAN 10 PERCENT OF IMPORTS IN AVERAGE YEARS. (FYI: WE DO NOT HAVE LATTER FIGURES DOCUMENTED BUT THEY COME FROM KNOWLEDGEABLE SOURCE WHO KNEW BONUS VOUCHER SCHEME INTIMATELY. HOWEVER, IN 1969 PERCENTAGE OF IMPORTS UNDER VOUCHER SCHEME ROSE SHARPLY. END FYI)

C. IN STRUCTURE: PAKISTANI SYSTEM WAS NOT BASED ON LIMITED OFFICIAL USE

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FIXED MINIMUM RATE BUT RELIED ON MARKET DEMAND/SUPPLY FACTORS. SRI LANKA ON CONTRARY HAS FIXED RELATIONSHIP OFFICIALLY SET AND MAINTAINED BETWEEN FEEC AND OFFICIAL RATES WHICH MAKES FEEC A PREDICTABLE RATE GUARANTEED BY GSL.

BEGIN FYI: CEYLONSE APPEAR TO HAVE SOME SPECIFIC KNOWLEDGE ON PAKISTAN-IMF CORRESPONDENCE. EMBASSY SHOULD

BE AWARE THAT 1964 IMF ANNUAL REPORT ON EXCHANGE RESTRICTIONS WHICH DEALS PAKISTAN AND 1969 EDITION DEALING WITH SRI LANKA USE SIMILAR LANGUAGE IN DESCRIBING EXISTENCE OF "OTHER EFFECTIVE RATES" IN EACH COUNTRY. WE SUSPECT COOREY HAS DIRECT KNOWLEDGE WHICH WE DO NOT THAT IMF HAS STATEMENT FROM PAKISTAN DESCRIBING BONUS VOUCHER SCHEME AS MULTIPLE EXCHANGE SYSTEM. CEYLONENE GAVE SUCH A STATEMENT TO IMF IN 1968 (SEE STATE 111396 JULY 1969). IT SHOULD ALSO BE NOTED THAT COOREY PROBABLY IS STILL UNHAPPY THAT IN 1969 WE INVOKED "PRIVILEGED DOCUMENT" (GSL LETTER TO IMF) IN GETTING CEYLONENE TO

ADMIT THEY HAD DUAL RATE. (SEE BENSON-KAY LETTER 8/30/69 REPORTING COOREY'S UNHAPPINESS). WE MAINTAIN WE HAD OFFICIAL ACCESS TO GSL LETTER WHICH WAS ROUTINELY TRANSMITTED TO ALL IMF EXECUTIVE DIRECTORS.

4. RE COOREY'S SPECULATIVE PROPOSAL REPORTED PARA 5 REFTTEL, WE HOPE THIS REPRESENTS SIGNAL CEYLONENE WILLING TO MOVE OUT OF LEGALISTIC ARGUMENT STAGE AND TOWARD DISCUSSION OF MUTUALLY ACCEPTABLE SETTLEMENT. RUSH

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